OUR CONSTITUTION

With a Foreword

by

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President

Constituent Assembly

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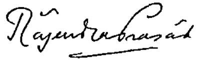
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FOREWORD

THIS IS A SHORT brochure on the Constitution of India It summarizes in a popular but accurate manner the main features of the Con stitution

For an authoritative opinion regarding particular points the articles of the Constitution have obviously to be referred to but an all round com prehensive view of it can be obtained from this

I have much pleasure in introducing it to the public



NEW DELHI
J [illegible]ry 26 1950

EVOLUTION OF THE CONSTITUENT ASSEMBLY

IN 1922 Mahatma Gandhi *first conceived the idea of a constituent* assembly elected by the people He observed Swaraj will not be a free gift of the British Parliament it will be a declaration of India s full self expression That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of the Union of South Africa Nevertheless it was not until 1935 that the idea was officially and seriously put forward by the Indian National Congress The National Congress wrote Pandit Jawaharlal Nehru in January 1938 stands for independence and a democratic state It has proposed that the constitution of a free India must be framed without outside interference by a constituent assembly elected on the basis of adult franchise That is the democratic way and there is no other way short of revolution which can bring the needed result An assembly so elected will represent the people as a whole and will be far more inter ested in the economic and social problems of the masses than in the petty communal issues which affect small groups Thus it will sol e without much difficulty the communal and other like problems

Till World War II the British Government resisted India's demand for a constituent assembly But the war and the international situation created circumstances which opened the eyes even of the Churchill Government The Cripps Plan sought to set up immediately upon the cessation of hostilities an elected body in order to frame a new constitution for the country This plan however proved abortive On March 15 1946 Mr Attlee the Labour Prime Minister declared in the House of Commons Is it any wonder that today India claims as a nation of 400 million people that has twice sent her sons to die for freedom that she should herself have freedom to decide her own destiny? What form of government is to replace the present regime is for India to decide but our desire is to help her to set up forthwith the machinery for making that decision

BORN WITH LIMITATIONS

The outcome was the present Constituent Assembly set up in 1946 according to the Cabinet Mission Plan It was not a sovereign body it was born with limitations both in respect of basic principles and procedure Moreover it was subject to the final authority of the British Parliament

Notwithstanding these adverse conditions the Congress agreed to join the Constituent Assembly The Muslim League on the other hand refused to do so despite the statement of December 6 which conceded practically everything the League wanted It fell back upon its original stand according to which the Muslim nation would never participate in any single constitution making machinery It demanded two separate constitution making bodies for the people of Pakistan and Hindustan

The deadlock persisted till the June 3 Plan brought about the partition of the country

A SOVEREIGN CONSTITUENT ASSEMBLY

The Indian Independence Act discarded the Cabinet Mission Plan and established the sovereign character of the Constituent Assembly On August 14 1947 it reassembled to assume power on behalf of the Government of India

In the first session of the sovereign Constituent Assembly of India its President Dr *Rajendra Prasad spoke of a classless society* for India It was to be a co operative commonwealth and the making of its constitution was the supreme task of the Assembly The *foundation of its constitutional* structure was laid by the Objectives Resolution moved by Pandit Jawaharlal Nehru It said

> Wh ll p w d th ty f th g d p d t I d t
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The brick and mortar of the structur were provided by the reports of the Union Powers Committe the Union Constitution Committee the Provincial Constitution Committee the Advisory Committee on Minorities and Fundamental Rights Committees on Chief Commissioners and Financial Relations between the Union and the States and the Advisory Committee on Tribal Areas But the final shape and form were given by the Drafting Committee with Dr Ambedkar as Chairman The Draft Constitution framed after eight months labour was considered clause by clause by the Constituent Assembly and was amended in the light of criticism

On November 26 1949 the Constituent Assembly in the name of the people of India adopted and enacted the Constitution—The Charter of India s Freedom The Constitution as it finally emerged after two years eleven months and eighteen days comprises 395 articles and eight schedules

NATIONAL FLAG

The Constituent Assembly has al o given the nation its national standard and emblem On July 22 1947 the Assembly adopted the Tricolour with the Asoka Chakra as India s Flag This Flag as

Pandit Jawaharlal Nehru put it is not a flag of an Empire not a flag of Imperialism but a Flag of Freedom not only for ourselves but a symbol of freedom to all people who may see it

It was in keeping with India's tradition that this symbol of freedom was presented to the sovereign Constituent Assembly by Shrimati Hansa Mehta on behalf of the women of India

A COMPREHENSIVE DOCUMENT

THE Constitution of India is a comprehensive document It makes detailed provisions to deal with the initial difficulties of an infant State These measures will also ensure harmonious working of the Constitution

Among others the Constitution deals with the following

(1) the structure of the government (2) the function and the relationship between the various organs (3) citizenship (4) fundamental rights (5) directive principles of State policy (6) the services (7) the federal judiciary and the High Courts (8) official language and (9) various other matters of basic importance

SOURCES

The framers of the Constitution have drawn wisely upon the mature experience of democratic countries They have tried

to avoid the defects of oth r constitutions and to accept onl) tho e features which would suit Indian conditions In making c rtain fundamental departures from the prevalent theories and practices they have adopted provisions which besides being original avoid rigidity and legalism in coping with emergenci s in p ace and war Moreo er they have given the Constitution a national character inasmuch as the *panchayats* the most valuable of surviving demo cratic institutions of ancient India have found a place in the country s constitutional structure

SOVEREIGNTY OF THE PEOPLE

Th Constitution seeks to vest sovereignty in the people and establish constitutional government which according to Woodrow Wilson is one whose powers have b en adapted to the interests of th people and maintenance of individual liberty

Tl e Objecti es Resolution unequivocally lays down that ulti mate so ereignty both in th Union and the units hall rest with tl e people and the principle has been incorporated in the preamble of the Constitution We The People of India it reads having solemnly resolved to constitute India into a Sovereign Democratic Republic do Hereby Adopt Enact and Give to Ourselves This Constitution

GOVERNMENT BY THE PEOPLE

The Constitution envisages a democratic go ernment and defines India as a sovereign democratic republic In other words India will have a system of government in which the average citizen has direct ac cess to the sources of authority The right to political power thus means not only the right to vote or choose representativ s but al o the right to hold office and be chosen for it For the first time in th history of modern India the Constitution confers that right on all adult persons that is p ople who have attained the age of twenty one and removes all *discrimination based on birth wealth colour race or sex* For instance by a single stroke of the pen the Constitution transforms the status of the Indian ryots who form seventy per cent of the population By parliamentary government and universal adult franchise the Government becomes accountable to the people and to their representati es

SECULAR STATE

In spite of the existence of various comm nitie in India tl e Constitution is opposed to communal polity and contemplates a secular State for India A single common citi en hip will be su ed to all irrespective of religion caste colour creed or x The sei ices rendered by the State will thus be distributed equally an ong all its citi ens Every citi en of India will be free to practis tl e religion of his or her choice The Government will scrupulously r frain from discrimination on religious grounds or from patroni ing or propa gating any particular faith The ideal is based on the theory that a secular Stat deal only vith the relations between man and man and not between man and God The State will regulate the individual s behaviour only in r lation to other human beings

FEDERAL STRUCTURE

The Ind an Constitution is a federal structure It has a dual polity with a written constitution defining cl rly the spheres of author ty of the Union and its constituent units called the States There is an independent judiciary to define and interpret the Constitution and resolve disputes arising between the Centre and the States But unlike Ame ica it i *not a federal federation with a bias towards auto* nomy and integrity of the u its Tl e Indian Constitution vests residuary authority in the Centre all matters not enumerated in the Concurrent or State Lists will be deemed to be included n the Un on List It also arms the Centre with adequate powe s to direct all important acti itie according to a uniformly executed plan The unity in administration is sought through a single judiciary un ty in b sic laws con mon all India services and a common language

The Indian Federation howe er is a flexible one The Centre can super ed th autho ity of tl e States in an emergency

ITS FLEXIBILITY

A good const tution must b elastic nd change in accordance with circumstances meet e entualities without having to undergo the formal process of amendment The Indian Constitution has all the qualities The C nstitu nt *As embly has refra ned from*

putting a seal of finality and infallibility upon the Constitution It has eschewed the difficult and complicated process of convention and referendum The complexities of the American and Australian constitutions have also been avoided Instead it has adopted a simple amending process

The Indian Constitution divides the constitutional provisions into three groups In one it includes articles relating to the (1) Central and the State Judiciary (2) extent of the executive authority of the Union (3) relationship between the Union and the States (4) Union State and the Concurrent Lists (5) representatives of the States in Parliament and (6) election of the President Most of the remaining provisions are grouped in the second category In relation to the latt r the Constitution stands amended if a bill to that effect is passed in each House by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House pr sent and voting As regards the former the amendments must be ratified by the legislatures of not less than half of the States specified in Parts A and B of the First Schedule The provisions not covered by the above procedures can be amended by the legisla tures in the ordinary way

Elasticity is further introduced by enabling the federal structure to be converted into a unitary one in an emergency The Central Government can then assume control of all affairs of the nation and the Central Legislature can exercise legislative powers which are other wise exclusively vested in the States Even in peace time Parliament can l gislate on any of these subjects provided that it is declared of national importance and adopted by a two third majority The adoption of a long list of the concurrent subjects not only makes the Constitution flexible but is also corrective of unnecessary legalism the bane of federalism

THE STATE LANGUAGE

The provision regarding the State language is another important feature of the new Constitution Besides being a medium of national intercourse a single State language is absolutely essential for adminis trative convenience in a vast and multi lingual country like India The Constitution prescribes Hindi in Devanagari script with the Indian numerals in international form as the official language of the Union For a period of fift en years however the English language will continue

to be used for all official purposes of the Union At the same time provisions have been made to introduce and extend Hindi for official use even earlier than the prescribed period The Legislatures of the States however can adopt one or more of the languages in use in the State as a regional language Fourteen of these including Hindi have been enumerated in the Eighth Schedule Legislatures can also use Hindi as the official languag

SPECIAL PROVISIONS FOR SCHEDULED AND TRIBAL AREAS

Finally the Constitution makes special provisions for the Scheduled and Tribal Areas These are meant to ensure the welfare and social autonomy of the Scheduled Tribes For the first ten years some seats in the legislatures and posts in public services will be reserved for them Special provisions have also been made for the administration of Tribal Areas In Assam for instance District Councils and Autonomous Regional Councils will be set up for the Tribal Areas These will give the tribal people a substantial share in administration For the other States Advisory Councils will be created in order to associate the tribal people with administration Moreover the Constitution stipulates that there should be a minister in charge of the welfare of Tribes and Scheduled Castes A special officer will periodically report on the working of these safeguards Finally a special commission will report on the welfare of Scheduled Areas

THE Indian Constitution provides for common citizenship. It eschews double citizenship characteristic of a federal structure.

The people entitled to Indian citizenship include

(1) those domiciled in India;

(2) refugees who have migrated to India from Pakistan; and

(3) Indians overseas.

But these provisions are not meant to be exhaustive nor are they final. It is left to Parliament to make comprehensive laws on the subject.

The first category of persons on whom the Constitution confers citizenship comprises those

(a) domiciled in India;
(b) one of whose parents was born in the territory of India; or
(c) who have ordinarily been resident in the territory of India for not less than five years, provided that they have not voluntarily acquired citizenship in any foreign state.

India has thus adopted a three fold basis for citizenship namely birth descent and residence These provisions are in certain ways stricter than those in the Constitution of the United States where birth alone is sufficient ground for citizenship In the Indian Constitution however an additional qualification is need d The p rson must have a permanent home in India

The *second category* consists of those who have migrated to India from Pakistan or who have come to India from Pakistan under permanent permits granted to them by the Indian authorities Displaced persons from Pakistan will be deemed to be citizens of India on the commencement of the Constitution if

(*a*) they or either of their parents or any of their grandparents were born in India before partition
(*b*) they (in the case of those who migrated before July 1948) have been ordinarily resident in the territory of India since the date of their migration and
(*c*) they (in the case of those who migrated on or after July 1948) were registered as citizens of India on application made by them before competent authorities

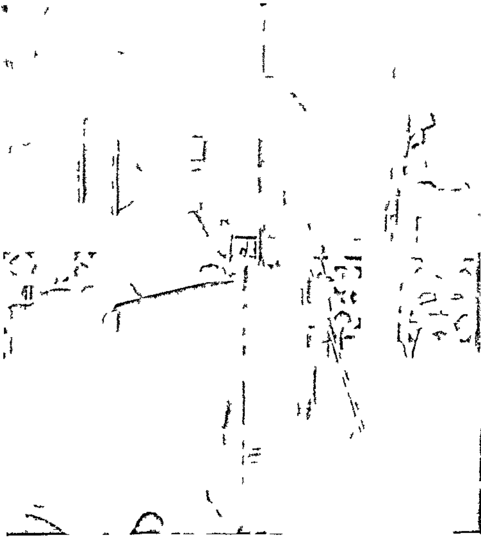
With regard to the last there is a reservation that no such person should be registered in India unless he has resided in the territory of India for at least six months immediately preceding the date of his application These provisions are in fact in conformity with the policy of the Government to accept practically all displaced persons who came to India from Pakistan before July 1948 but thereafter to accept only such people as were registered citizens of India The Constitution denies citizenship to those who migrated to Pakistan after March 1 1947 but exempts those who have returned to India from Pakistan under permits seeking permanent settlement The proviso is intended to help those Muslims or their families who left for Pakistan during the disturbances without any intention of residing there permanently

Finally the right of citizenship has also been conferred on persons of Indian origin r siding outside India They include all who either themselves or any of whose parents or grandparents were born in undivid d India and who register themsel es as citizens of India through India s diplomatic or consular representatives abroad

"RIGHTS are the groundwork of the State They are the quality which gives the exercise of its power a moral character And they are natural rights in the sense that they are essential for the good life Their inclusion in the constitution of a country makes them inviolable commanding the respect of the people and the government alike Being fundamental to each citizen they are made justiciable but some rights which cannot be enforced in the courts are more imperative and less violable because of their place in the Constitution They have a great educative value and provide training in citizenship

The theory of fundamental rights implies limited government It aims at preventing the government and the legislature from becoming totalitarian and in doing so it affords the individual an opportunity for self development But these rights are not absolute they are subject to limitations imposed by the State in order to secure rights for all individuals or to promote the greater interests of the community or the State

The Indian Constitution offers all citi ens individually and collectively the best fruits of democracy and those basic freedoms and conditions of life which alone make life significant and productive



PANDIT NEHRU dd g h m d ght f th C n t t t
A mbly n Aug t 14 15 1947



D SACHCHIDANANDA SINHA wh t d Ch m n b f th f m l l t f th P d nt f th C t t t A mbly

The rights contained in Part III of the Constitution are declared fundamental and justiciable All other laws which are inconsistent with them or take away or abridge these rights are null and void The fundamental rights are classified as

(1) Right to Equality

(2) Right to Freedom

(3) Right to Freedom of Religion

(4) Cultural and Educational Rights

(5) Right to Property and

(6) Right to Constitutional Remedies

RIGHT TO EQUALITY

The new Constitution postulates ci ic and social equality as the bedrock of Indian polity Discrimination against any citi en on grounds of religion race caste sex or place of birth is prohibited In public employment it ensures equality of opportunity for all The only exception is the right given to the legislature to prescribe in certain cases residential qualifications and to reserve some posts for backward classes who in the opinion of the State are not adequately represent ed in the services The definition of backward classes has been left to the decision of the State Governments

Another important step which the Constitution has taken towards the establishment of social equality in Ind a is the abolit on of titles local or foreign which created artificial differences among the people Only the conferment of military or academic distinctions will continue

ABOLITION OF UNTOUCHABILITY

The Constitution has put legal stamp on the great social revolution brought about by Mahatma Gandhi It l fts about fifty million untouchables of India from their age old low social status It lays down that untouchabil ty is abolisl ed and its practice in any form is forbidden The enforcement of any disability arising out

of untouchability shall be an offence punishable by law This single clause outlawing untouchability is more precious than all the rights of equality guaranteed under the Constitution It puts an end to the most degrading of social inequalities that have vitiated Hindu society Such social customs and disabilities as enforced segregation of untouchables at wells in streets *schools and places of worship are declared illegal In fact the* ban covers all forms of untouchability specified or unspecified Some of the prevalent social disabilities are removed and equality in public places is guaranteed to all It is provided that no citi en shall on grounds only of religion race caste sex place of birth or any of them be subject to any disability liability restriction or condition with regard to

> (*a*) access to shops public restaurants hotels and places of public entertainment or
>
> (*b*) the use of wells tanks bathing ghats roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

With the statutory equality of status accorded to untouchables a new chapter of social d mocracy opens in India This right to equality or equal protection of law against segregation on grounds of colour is still to be recogni ed even in some advanced countries Under the Indian Constitution however segregation on grounds of colour or caste in public places carriag s and educational institutions constitutes an offence and a direct breach of the right to equality

INDIVIDUAL LIBERTY

Consistent with its democratic aims the new Constitution seeks to guarantee basic rights and freedom to all people in India Every citi en enjoys freedom of speech and expression the right to assemble peacefully and without arms form associations or unions move freely throughout the territory of India reside and settle in any part of it acquire hold and dispose of property and practise any profession or carry on any occupation trade or bu iness

These rights however can by no means be absolute nor are they so in practice The Constitution enables the State to restrict these rights in the interest of public order decency morality and security of

State and authori es it to impose any reasonable restrictions in public interest It also safeguards the right of the State to make laws relating to libel slander defamation and contempt of court

It is sometimes said that the saving clauses in the Constitution detract from the rights ensured by Article Nineteen This is an erroneous conception No rights are ever absolute They are always subject to limitations imposed by the State to secure or promote the greater interests of the community Even in the American Constitution some restrictions on rights are recognized by the Supreme Court as vital for the State

Personal liberty and the rule of law also find a place in the Constitution No person can be convicted of any offence except for the violation of the law in force at the time of the offence Nor can he be subject to a penalty greater than what may have been included under the existing laws The other legal reliefs a ailable to the individual are that no person will be prosecuted and punished for the same offence twice and that no person accused of any offence will be compelled to be a witness against himself The principle of the rule of law is recogni ed by other provisions also Thus no person can be deprived of his life or per onal liberty except in accordance with the procedure established by law Nor shall he be denied equality before the law or the equal protection of the laws of the country

Detention without trial has been an anathema to the people of India The Constitution therefore includes measures against arbitrary arrest and indefinite detention It lays down that no person who is arrested sl all be detained in custody without being informed as soon may be of the ground for such arrest nor shall he be denied the right to consult and be d fended by a legal practitioner of his choice It defines the procedure to be adopted in the e ent of detention It fixes three months as the maximum period of d tention unless it is extended on the advice of an Ad sory Board comprising p rsons qualified to be appointed as judges of the High Court It also stipulates that the authority making such an order should communicate to the person arrested the ground on wl ch the order has been made and afford him the earliest opportunity of making representations against sucl an ord r The only e emption from this relief are persons wl o are (i) for the time be ng consid red to be enem es of India (ii) aliens or (iii) are under pre enti e detention

Articles on Right to Eq also guarantee freedom of tr

and commerce throughout the territory of India Traffic in human beings enforced labour and employment of children in factories mines and other ha ardous employment are prohibited

RELIGIOUS FREEDOM

True to the tradition of religious toleration and the catholicity of the Objectives Resolution India s new Constitution guarantees reli gious freedom to all Subject only to public order morality health and other essential provisions all persons are entitled to freedom of conscience and the right to profess practise and propagate religion freely The right has been further guaranteed by the autonomy given to every religious denomination to manage its religious affairs and to own acquire and administer property for religious or charitable purposes The Sikhs have thus the right to wear and carry *kripans* R --

promotion and the maintenance of any particular religious denomina tion Nor is religious instruction or religious worship compulsory at institutions which are either recogni ed by the State or receive aid from the State funds The Constitution taboos religious instruction as such in all educational institutions run and maintained by the State

CULTURAL AND EDUCATIONAL RIGHTS

The new Constitution as one member of the Constituent Assembly put it opens a new era of the rights of the minorities It tends to safeguard the freedom of every minority to practise its own religion and to preserve its own culture language and script The term minority is used in this conn ction in a wide sense to include even cultural minorities which exist in a particular locality The main idea as Dr Amb dkar explained was to see that if there was a cultural minority which wanted to preserve its own language and culture the State would not by law impose upon it any other culture which might be local or otherwise All minorities religious or linguistic have been given the right to establish and administer educational institu tions and the State is prohibited from discriminating against any such institution in granting aid Further no citi en is denied admission to educational institutions maintained or aided by the State on

grounds only of religion race caste or language Thus in addition to their own the minorities will have all the educational facilities available to the majority

RIGHT TO PROPERTY

The Indian Constitution prohibits expropriation of property by the State It stipulates compensation in the event of compulsory acquisition for public purposes It assures that no person shall be deprived of his property save by authority of law For compensation it provides that no property movable or immovable including interest in any company owning any industrial or commercial undertaking shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquir d and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given An additional safeguard prescribes that no State legislation for compulsory acquisition can be enforced unless it has received the assent of the President

Parliament will be the sole judge on two matters on th propriety of the principle of acquisition and the decision on compensation Judicial review arises only if there is a fraud on the Constitution or when expropriation or the principle of compensation is illusory Such phrases as just compensation due process of law or adequate compensation are purposely avoided to eliminate embarrassing judicial review and unnecessary litigation

The Constitution, however exempts from its jurisdiction certain pending legislation on the abolition of the amindari system Such legislation will, however be valid after it has received the President s assent. This distinction will prevent the sabotage of an essential reform in land tenure by protracted litigation

The Constitution also endows the State with the authority to make any law for the purpose of imposing or levying a ta or penalty for the promotion of public health or the prevention of danger to life or property Certain other laws including those dealing with evacuee property are exempt from the jurisdiction of the courts

The provision on constitutional remedies as d scribed by Dr Ambedkar is the heart and soul of the whole Constitution Rights l av no meaning unless they are enforced and safeguarded by constitutional m thods Every citi en has the right to move the Supreme Co.rt tor the enforcement of fundam ntal rights To this end the Supreme Court is given general powers to safeguard thes rights as well as the power to propose particular remedies such as *habeas corpus mandamus* etc

The inclusion of these writs in the Constitution guarante s the freedom of the individual At present they can be abolished at will by the legislature When the Constitution comes into force they will become part of the fundamental law and cannot b chang d without amending the Constitution Parliament however is authori ed to confer these powers on any court to exercise them within the local limits of its jurisdiction The right to constitutional remedies cannot be suspended save in a declared emergency Even then the suspension of rights need not necessarily extend to the whole of India Nor is the power of suspension unf ttered Th position under the Indian Constitution more or less corresponds to the practice in the United States Thus while the Central Legislature has tl e complete power the Executive Head of the State h s only *ad interim* power to suspend the rights Moreover the rights are restored as soon as the emergency is o er

Parliament however is authori ed to modify the fundamental rights in their application to the Armed Forces A public servant can also be indemnified for any act done in his official capacity under martial law It can further validate any s ntence passed or punisl - ment inflicted during its operation

Notwithstanding these limitations Parliament is authori ed to pass legislation to give effect to these rights and provide punishment for offences committed against it. Laws and punishments in force at present with regard to these matters will continue to be so until altered or repealed by Parliament The power to make these laws and prescribe punishment for offences is for the time being vested only in Parliament and not in the legislature of any State This provision Dr Ambedkar explained is necessary to make the fundamental rights and punishment for their breach uniform throughout Indi

THE chapter dealing with directive principles of State policy is a unique feature of our Constitution. Its inclusion was found necessary in India and the only parallel is the Constitution of the Republic of Ireland. This chapter gives directions to the future legislature and executive so as to ensure exercise of their authority. They are meant to be codes of constitutional propriety which will determine the relation of the government with the people. The principles are meant to be an imperative basis of State policy.

The expression "State" however has a dual meaning. As a collective entity it represents the Government and Parliament of India and the government and the legislature of each State. In a distributive sense it implies even the village panchayat, district boards and other local bodies.

TOWARDS ECONOMIC DEMOCRACY

To make democracy real and effective one of the directive principles enjoins that it must be both economic and political

This means one man one value although the Constitution does not prescribe any specific method to achieve this goal What it does direct however is that every government whether at the Centre or in the States should strive to bring about a democratic economic structure As Dr Ambedkar put it it enjoins that however adverse the circum stances may be *the Government should always endeavour to achieve* this principle

Among the economic rights and principles of social security which the Constitution specifically requires the State to ensure for its people are

(1) adequate means of livelihood

(2) fair distribution of wealth

(3) equal pay for equal work

(4) protection of child and adult labour

(5) employment

(6) free and compulsory education for children up to the age of fourteen

(7) public assistance in the event of unemployment old age sickness disability and other cases of undeserved want

(8) living wage

(9) conditions of work assuring a decent standard of lif full enjoyment of l isure and social and cultural oppor tunities and

(10) raising the level of nutrition and improvement of health

Special emphasis is laid on the *promotion of educational and* economic interests of the Scheduled Castes and Scheduled Tribes and other backward sections of the community

The *directives* also *incorporate* other *important subjects* which progressive opinion in this country has been asking for a long time Some of these are

(1) organization of the village *panchayats*

(2) uniform civil code for all citizens

(3) prohibition

(4) organization of agriculture and animal husbandry

(5) prohibition of slaughter of useful cattle especially milch *and draught cattle and their young ones*

(6) protection preservation and maintenance of monuments and places and objects of national and historical importance and

(7) separation of the judiciary from the executive

Consistent with the high moral traditions of the country and its desire for world peace it is further affirmed that the foreign policy of India should promote national peace and security maintain just and *honourable relations between nations foster respect for international* law and treaty obligations and encourage the settlement of international disputes by arbitration

The Indian Union

INDIA, also to be known as BHARAT, has been described in the Indian Constitution as a Union of States. The name implies the indestructible nature of its unity. No unit can thus secede from the Union. The country is an integral whole, its people a single people living under a single imperium derived from a single source, despite the different units or States into which it is divided for administrative convenience. The States consist of twenty-seven units specified in parts A, B and C of the First Schedule.

These States include the Governors' Provinces, the States Unions, the centrally administered states, the Chief Commissioner Provinces and other Indian States. The multiplicity of units was a legacy of the British regime. By a process of integration and unionisation, however, homogeneity has emerged from a congeries of Indian states whose constitution and administration presented baffling variety. Some of these states which at the time of the lapse of paramountcy presented a potential threat to the unity of the country have either been merged into adjoining provinces or have been integrated into compact units of the Indian Union. Unlike the Indian Federation of 1935 Act which proposed a marriage between

autocracy and d mocracy the Indian Union under the new demo cratic Constitution symboli es th union of equal and compatibles

Redistribution of Units

The authority to admit and establish new Stat s as well as to alter the areas and boundaries or names of existing States is vested in Parliament vi the Central Legislature In this matter the President will ascertain the views of the l gislatur of each of the States concerned Law which contemplates a change in the boundaries of the Union will not b considered an amendment to the Constitu tion This provision is intended to facilitate the creation of rational administrativ units

Federation

The Indian Constitution has all the characteristics of a federation It has for instance (1) a written constitution (2) a clear demarcation of powers between the States and the Centre and (3) the existence of a competent and independent Supreme Court to settle disputes between the Centre and the constituent units The Constitution is federal in the sense that it establishes a dual polity with the Union at the Centre and the States at the periphery each endowed with sovereign powers to b exercised in the field assigned to them respectively by the Constitution The proposed union is not a League of States nor are the States the agencies of the Union deri ing powers from it In this respect it conforms to the Am rican Canadian and Austral an patterns and diff rs from the unitary constitution of the United Kingdom

Spec al Features

The Indian Federation however differs from the other feder ations in many vital respects In the U S A there is dual citi enship each State has the right to grant its citi ens or residents a number of rights which it may deny or grant on more difficult terms to non resi dents As opposed to this the Indian Const tution nvisages a dual polity with on citi enship and no sep rate citi nship for the States Indians no matter where they reside are all equal in the eyes of law The States in America have the right to make their own constitutions In India no such power is given to th units There is only one con stitution applicable to all and one constituent authority Article 238 is an exception and deals with some features p cul ar to the princely states and the condit ons arising out of an agreement between them and the Government of India E cept in the transitional period the constitutional relationship of the states with the Centre and their internal structure is on a par with the Provinces

In some federations the duality of polity involves a duality of legislature executive judiciary and services This duplication tends to produce a diversity in law administration and judiciary Some diversity may be desirable to cope with local needs and circumstances but beyond a particular point it only causes confusion A modern constitution must provide for uniformity in all basic matters Legislative and administrative unity is envisaged by the Indian Constitution by means of (1) a single judiciary (2) uniformity in fundamental civil and criminal law and (3) common all India civil services

The High Courts and the Supreme Court form a single integrated judiciary They have jurisdiction over cases arising under various laws constitutional civil and criminal The Codes of Civil and Criminal Law are placed in the Concurrent List Uniformity is thus preserved without impairing the federal system Uniformity in administration is ensured by placing members of all India services in key posts Besides the Constitution affords the Centre and the President ample scope for initiative in all matters of national importance

Federal systems are generally rigid It becomes almost impossible to change them The Indian Constitution however is unique in its federalism It is at once unitary and federal according to circumstances Normally it is meant to be federal but in an emergency it can assume a unitary character

The Constitution has a Concurrent List of forty seven items In this respect it follows the Australian example but goes a step further To avoid the weakness of rigidity and legalism inherent in a federal polity it vests Parliament with exclusive powers in as many as ninety seven items Even in normal times the Centre s legislative authority can be extended The comparatively easy amending process adds further to its flexibility

RELATIONS BETWEEN THE UNION AND THE STATES

Legislative Relation

The Constitution distributes the items for legislation among three lists (1) the Union List (2) the State List and (3) the Concurrent List The respective jurisdictions of the Union and the States and their mutual relations are clearly defined Measures enacted by the Union under the Concurrent List have priority irrespective of

corresponding State legislation Lik Canada and unlike America the residuary power in India is vested in the Centre

Except for the States mentioned in Part C normally the Centre cannot legislate on any m tter included in the State List Parliament can ho vever do so (1) if the Council of States recommends that such legislation is in national interest (2) if two or more States mutually agree that this should b done and (3) to implement treaties or inter national conv ntion

Administrative Relations

The Constitution seeks to ensure harmony betwe n the Union and the States The executive authority of the State must be so exercised that it ensures compliance with Union legislation and its administrati e direction The Centre can also give directions to a State regarding the construction and maintenance of the means of communication of national or military importance

The President with the consent of Parliament and the Go rnment of a State may confer powers or impos duties on State officers in respect of matters normally outsid their jurisdiction In such cases the Centre bears the extra cost involved in the discharge of the e duties

Co ordination between States

To acl ie e inter State co ordination the President is authori ed to appoint an inter State Council The functions of the Council are

(a) to enquire into and advise upon disput s bet veen States and
(b) to devise means for promoting common interests of the Union and the States

Finan ial Relations

Before partition the re nue resources of the Provinces were limited The new Const tution seeks to remove this defect It lays down a broad scheme for distribution of resources between the Centre and the States But it leaves the task of detailed allocation to the Finance Commission to be set up by the President within two years

Emergency P u r

Besides its many other onerou responsibilities the Union Govern ment has to (1) raise the standard of its administration and l gislation

PARLIAMENTARY GOVERNMENT

THE Indian Constitution provides for a parliamentary form of government Accordingly the executive is individually and collectively responsible to the legislature in respect of all its functions decisions and actions The legislature controls the executive primarily through its legislative authority and control of the purse At general elections people are given an opportunity to elect a new parliament

This system of government differs basically from that of the United States of America where the President is the real executive and the Cabinet only his shadow Under the Indian Constitution however the President occupies the same position as the King under the English Constitution He is the head of the State but not of the executive He represents the nation but does not rule the nation His place in the administration is that of a ceremonial device on a seal by which the nation s decisions are made known

ELECTION OF THE PRESIDENT

The Pr sid n will be indirectly el t d by an electo al colleg consi ting of elected m mbers o b h H u s of Pa lamen and the Legi latures f the Stat s Th l c i n will t e l the m l d of proporti nal repres ntation and ne tr n fera l o e The President being a nominal h ad lir t el cti n wa co dered unnec ssary Mor r it d fu d to pr v d u tabl el cto al machinery for all adu ot r

In th pr id nt l l cti n th number of o each elec d member of th l gi latur t a p rt cular Stat can ca will be asce tained by a m th d wh h will b cle r from th fo o ng example given in the D aft Con titu ion

The population of Bomba is 20 849 8 0 Let us take th to al number of elected memb rs in the Legislative Ass mbly of Bombay to be 208 (i e one member repres nting one lakh of th population) To ob ain the number of vo es whi h e h su h ele ed memb will b entitled to cas at the election of th Pres den we have fi s to divide 20 849 840 (which is the population) by 208 (wh h is th to al numb of elected members) and then to divide the quotien by 1 000 In this case the quo ient is 100,239 The numbe of vo es which each such member will b entitled to cas would b 100,239/1000 i e 100 (disregarding the remainde 239 which is le s than 500

In the cas of an elected m mber of either Hou of Parliament he the Central Legi lature h can ca t as man votes as ma be obtained by di iding th total numb r of vot s to b ca t by all the elected members of the l gislature of the States by th total numb r of the el cted memb rs of both th Hou of Parliam nt

QUALIFICATIONS

The qualifications need d by a candidat for the office of Pr sident are that he hould b (1) a citi en of India (2) over thirty five y ars of ag and (3) eligible for election as a memb r of the House of th e Peopl A governm nt rvant how ver is ineligible for the office of Pre id nt

TERM OF OFFICE

The term of the office of President is five years unless he resigns earlier or is removed from office by impeachment The President is eligible for re election The President will have an official residence and draw a alary of Rs 10 000 per month The salary cannot be reduced during his term of office He is also entitled to the same privileges and allowances as the Governor General before January 26 1950

PROTECTION

The august off ce of the President of the Indian Republic carries with it great dignity and legal pri ileges The *President is not answer* able to any court for the exercise of the powers and duties of his office except in case of impeachment No criminal proceedings can be instituted against him during his tenure of office nor any civil proceedings in which relief is claimed from him before two months written notice

IMPEACHMENT

The Indian Constitution provides for impeachment of the President for the violation of the Constitution A motion to that eff ct may be initiated in either Hous of Parliament but must be passed in the form of a r solution by a two third majority Fourteen days notice signed by a fourth of the total members of the House must be gi en in advance whil the charges must be investigated by a House other than the one framing them If the resolution is passed the President is forthw ith removed from office

POWERS

The Constitution vests in the President all executive authority of the Union including the supreme command of the Defence Forces and the power to grant pardon and to remit punishment or to commute sentences in certain cases All important appointments will be made by him including those of governors diplomats judges of the Supreme and High Courts the Chairman and members of the

Union Public Service Commission the Attorney General of India and the Comptroller and Auditor General of India. He will also appoint the Election and Finance Commissions and other commissions which will report on the administration of the scheduled areas and investigate the conditions of socially and educationally backward classes.

The legislative authority of the President extends to issuing ordinances during the recess of Parliament. He can make regulations for the peace and good government of the Scheduled Areas. He can send bills to Parliament for reconsideration, dissolve the House of the People, convene joint sessions of both Houses and address or send messages to either or both of them. No money can be granted unless recommended by the President nor can money bills be introduced except on his recommendation.

EMERGENCY POWERS

As in the case of the Weimar Constitution for Germany the Indian Constitution gives wide powers to the President in an emergency. It contemplates three types of emergencies and correspondingly three kinds of promulgation which the President can make.

Emergency caused by War or Internal Disturbances

If a grave emergency exists which threatens the security of India or any part of her territory by reason of war or external aggression or internal disturbances the President may declare an emergency. Sometimes this declaration may be made in anticipation of war or aggression or civil commotion.

The authority of the President however is always subject to the authority of Parliament. Such a proclamation must be made before each House of Parliament. It will cease to be valid at the end of two months unless otherwise decided by both Houses of Parliament. Even so it can operate only for six months and may not be extended beyond three years. In the event of an emergency the Centre can supersede the legislative powers of the State. The President can for a short period or for the whole period of the emergency suspend the right of the individual to move the courts to enforce fundamental rights. At the same time the President has the right to modify the normal allocation of the country's revenue resources for the financial year.

Failure of Constitutional Machinery in States

If the President is satisfied on the basis of reports that the government of a State cannot be carried on in accordance with the provisions of the Constitution he can issue a proclamation to that effect He can then himself assume all the functions of the Government of the State including the powers of the Governor or the Rajpramukh He can empower Parliament to exercise the powers of the State legislature He can suspend any part of the Constitution relating to any individual in the State The only exception is that he cannot assume any of the powers vested in or exercisable by the High Court. Nor can he suspend the operation of any provisions of the Constitution relating to that Court

As regards legislative powers Parliament can delegate the power to make laws for the State to the President or any authority specified by him The President however cannot promulgate ordinances [illegible] the State when both the Houses of Parliament are in session. [illegible] House of the People is not in session e penditure from the Consolidated Fund of the State can be authori ed by him pending [illegible] Parliament

Financial Emergency

If the President is satisfied that a situation has arisen whe[illegible] financial stability or credit of India or any of its territories is threa[illegible] he can declare a financial emergency In such an event he ca[illegible] necessary directions including suggestions for the reduction [illegible] and allowances of public servants belonging to the Union o[illegible] All money bills passed by the State legislatures are also [illegible] the approval of the President

The procedure and duration of emergencies in the la[illegible] will be the same as in the case of the first declaration.

Although the President has all these formal power[illegible] follow that he will exercise them in an arbitrary ma[illegible] titular head of the Republic The real head of the ex[illegible] the Prime Minister and the Cabinet that is the Counc[illegible] will be the executive organ The Indian Constitu[illegible] leadership and dominance of the Cabinet and leaves [illegible] the courts and the people to keep a check on its act[illegible]

Although there is no specific provision that th[illegible] act on the advice of Ministers the relation[illegible]

I r sid nt and the Council c f Mini t rs will pr l al ly be g verned by a convention In this matter the Indian Constituti n will follow tl e British proc dur

THE VICE PRESIDENT

Tl Constitution provid s for a Vi e I r sident of India who is an ex officio Chairman of the Council of S ates In th s respect hi office corr sponds to that of the Vice Pr s d nt of the U S A If th Pr sid nt is ill if he resigns di s or is removed or for any r ason abs nt th Vice Presid nt will officiate as I resident But unlik the American Vice I resid nt h does not automatically becom the President for th r st c f th t rm when th latter r signs or dies

ELECTION

The Vice I resid nt is el cted at a joint m ting of both th Hous s of Parliament according to proportional repres ntation by a singl transferabl vot Any citi en of India aged thirty fi years and qualified for memb rship of the Council of States is eligibl for th office The Vice President may b r moved from his office for incapacity or want of confid nce

COUNCIL OF MINISTERS

According to the Constitution a Council of Ministers with the Prim Minister as its l ad will aid and advi e the President *in the exercise of his functions The l ad rship of the Prime* Minister is explicitly r cogni ed The Prime Minister will be appointed by the President while the oth r minist rs ill be appointed by the President on th advic f the Prime Minister The Prime Minister will b a link l etween the Cabin t and the Presid nt He will communicate to the Pr sident all decisions of the Cabinet and furnish him with all other information that he might like to have

The minist rs hold office during the pl asure of th President but this provision is coupl d with another which stipulates their collelective

responsibility to the House of the People This means that a minister would be liable to removal on two grounds namely want of confidence and impurity of administration The ministers are required to take oaths of office and secrecy and draw such salaries as were paid to them before January 26 1950

ONE of the outstanding features of the Indian Constitution relates to adult franchise. It lays down that "the election of the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such election." This provision is characterised by some as the fountain-spring of democracy which entitles every adult in India, male or female, to a share in the Government.

Dr Rajendra Prasad has observed: "We have provided for adult suffrage by which the Legislative Assemblies in the Provinces and the House of the People in the Centre will be elected. It is a very big step that we have taken. It is big not only because our present [illegible] smaller electorate and based very largely on

numbers [illegible]

more and we have found from experience gained [illegible]

of voters that has been going on in the Provinces that fifty per cent roughly represent the adult population. And on that basis we shall

have not less than 160 million voters on our rolls The work of organi ing election by such vast numb rs is of tremendous magni tude and there is no other country wh r election on such a large scale has yet been held

The Legi lative Ass mblies in th Provinces it is roughly calculated will have mor than 3 800 members who will have to be elected in as many constituenci s or perhaps a few less Then there will *be something like 500 memb rs for the House of the People and* about 220 members for th Council of Stat We shall thus have to provide for the election of more than 4 500 members and the country will have to be divided into som thing like 4 000 constituencies or so I was the other day as a matter of amus ment calculating what our electoral roll will look like If you print forty names on a page of foolscap si e we shall requir something like twenty lakhs of sheets of foolscap si e to print all the names of the voters and if you combine the whole thing in one volum the thickness of the olume will be som thing like 200 yards That alone gi s us some idea of the astness of the task and the work invol ed in finali ing the rolls delimiting constituencies fixin pollin stations and making other arrangements which will ha e to be done between now and the winter of 1950 51 when it is hoped the elections may be held

The Constitution sweeps away all antiquated and undemocratic qualifications—property income status titles literacy etc which under the Act of 1919 debarred ninty seven per cent and under the 1935 Act ninety per c nt of the people of India from exercising th ir elementary right of citi enship the right of voting The Constitu tion removes the notorious syst m of communal electorates which had broken up Indian soci ty statutorily into communal compartments The citi ens in India will no v vot as indi iduals and not as Hindus Muslims or Christians There will be on g neral electoral roll for ev ry territorial constitu ncy and no person will be ineligible on ground of religion race caste or sex

Parliament

In the Indian Constitution the central legislature is called Parlia ment It consists of the Presid nt and the two Houses to be known respectively as the Council of States and the Hou e of the People The Pr sident is an integral part of Parliament All bills pas ed by the two Houses must have his formal assent and all acts will be and promulgated by him

Council of States

Like other federal constitutions the Indian Constitution also envisages a bicameral system The Council of States as its name implies will include representatives from the States or the constituent units of the Indian Union It is a permanent body one third of its members retiring every second year Its maximum strength is 250 and corresponds to half of the House of the People Out of these twelve members will be nominated by the President from among well known persons in the realm of arts and letters science and social service The rest will be representatives of the States According to the Fourth Schedule which relates to the allocation of seats to the States the States specified in Part A will have 145 representatives while the States in Part B and C fifty three and seven respectively

Elections for the Council of States will be indirect In other words the representatives of the States specified in Parts A and B will not be elected directly by the people Instead they will be elected from an electoral college consisting of elected members of the Legislative Assembly of a State Elections will be by a system of proportional representation and single transferable vote According to this system a voter votes for only one candidate but he may indicate the order of candidates for whom he would like to have his vote transferred By this arrangement he is reasonably assured that his vote will not be wasted As regards the States mentioned in Part C the Constitution leaves the method of selection to be determined by Parliament

House of the People

The maximum strength of the House of the People is fixed at 500 members directly elected by the voters in the States Provision has been made for the reservation of seats for the Scheduled Castes and Scheduled Tribes Members of the Anglo Indian community can also be nominated by the President to the House of the People

Normally the life of the House is five years unless it is dissolved earlier During an emergency its life can be prolonged by a year at a time It cannot however continue beyond a period of six months after the proclamation has ceased to operate

CONSTITUENCIES

For the purpose of election the States are to be divided into territorial constituencies and the number of representatives to be

allotted to each such constituency shall b so det rmined as to ensur that there shall be not less than one repr ntativ for ev ry 750 000 of the population and not more than one repres ntativ for every 500 000 of the population Th o erall condition is that th ratio between the number of repres ntatives allotted to a constitu ncy and its total population (as ascertained at th last pr ding c nsus) must be uniform throughout India

Fai Elect ons

To ensure fair elections an indep nd nt El ction Commission will b appointed It will be responsible for the preparation of electoral rolls and the conduct of el ctions To that end an indep ident status is assured to th Chiet Election Commission r

Sessions

The Constitution stipulat that both the Houses should meet at least twic every year and that not more than six month hould elapse between th tw session Thi nsures r gular s ons of th legislature

The quorum prescribed is t n per cent of the total member ship of the House All decis on will b carried by a majority of the members pr sent and voting Th Speaker is given only a casting vote The presiding offic s of the Uppe House are called th Chairman and th D puty Cha rman Th corr sponding off cers of the House of th P ople a tl Sp ak r and the D puty Sp aker

Qual f cat o is

Tl qualifi ations for a m mb r of Parl ament ar tl at h should (1) be a citi en of India (2) be not l ss than thirty year of ag ii th cas of tl Council of States and not l ss than twenty five in th cas of tl House of the P ople and (3) poss ss sucl other qualif cations as may b laid down by Parliam nt

D squal f cations

A person is disqualifi d from b ing a memb r of Parliam nt if he (a) holds any office of profit under any Gov rnment n India (b) is of unsound mind (c) voluntarily acqu s citi nship in a foreign stat and (d) i so dis jual fi d by or und any law mad by Parliam nt

All l sput s conc rn ig m ml rship ar t b r f rr d to the

President for decision. He is however required to act in these cases on the advice of the Election Commission.

Privileges

The Constitution assures members freedom of speech in Parliament. This freedom however is subject to the provisions of the Constitution and rules and standing orders of Parliament. The legislators are also granted immunity from penal action for any speech made or vote given by them either before the House or any of its committees. This relief also covers the publication of the proceedings of the House. Until defined by Parliament other powers privileges and immunities of the members of the House are those of the House of Commons of the United Kingdom.

Legislative Procedure

Although there is a bicameral legislature at the Centre the Constitution safeguards the supremacy of the Lower House in all matters of legislation. In financial affairs its authority is final. The detailed rules of procedure are to be framed by each House of Parliament. The Constitution only lays down broad outlines of procedure. Among others it provides that bills other than the money bills can be introduced in either House. The money bills must be initiated in the Lower House.

Procedure regarding Ordinary Bills

The non money bills must be passed by both Houses. But in case of a deadlock between the two Houses the President can summon them to meet at a joint sitting. At such joint meetings decisions are taken by a majority of the total members of both the Houses present and voting. A bill so adopted is deemed to have been passed by both the Houses.

Procedure regarding Money Bills

A money bill after its passage through the House of the People is sent to the Council of State which must return it with its recommendations within a fortnight. The House of the People may accept or reject it. The bill as finally adopted by the House of the People is considered to have been adopted by both Houses.

Annual Financial Statement

Under the Constitution the President must put before both the Houses of Parliament a statement of the estimated receipt and expenditure of the Government of India. This is called the Annual Financial Statement. It shows the sums to be charged to the Consolidated Fund of India that is the central purse and the money

required to me t other expenditure The former category of exp nditure is non votable while the latt r is votabl

Financial Pro edure

Parliament has an opportunity to ercis effecti e control ov r the finances of the Go ernm nt of India Votable e timates are to be submitt d dir ctly to the Hou e of the People The Council of States do s not com into th picture The House of the People can assent to refus or reduce th grant All demands for grants are made on th recommendations of th Presid nt

After the demand for gr nts follows the Appropriation Bill which seeks to appropriat fr m the Consolidat d Fund of India monies requir d to me t th grants mad by th House of th P ople and the expenditure char d to th Consolidated Fund The procedur adopt d follows that of Gr at Britain Canada Au tralia and South Africa No amendment i p rmissible if it aries or alt rs the destina tion of any grant or r duc s *p ndit ire char d to th Consolidated* Fund It is furth pro ided that all monies from th Con olidated Fund should b withdrawn in conformity with the provisions of the Appropriation Act

Tl ta ation p o; o al of the Co ernm nt and otl r rel vant matt s form tl su b j ct of F nanc Bill Tl e Finai c Bill is in t ated and int du d in th Ho i ot th People on the r comm ndat on of the Presid nt

Other Grant

The House of the People is gi en the authority to make any grant in advance p nding compl tion of procedure Th s is known as *ote on account* This procedur will enable the House to de ot mo e t m to discussion of the budget It will no longer be necess y for th House to vote on all demands for grants at tl nd of the financial y ar

The House of the People can also sanction votes of credit and exceptional g ant The Constitution provides for the grant of suppl m ntary additional or e c ss grants and till th y are made by the Hous of tl e P ople the Pres d nt can make ad ances out of the Conting ncy Fund

The Executive

THE governmental machinery of the States mentioned in Part A of the First Schedule closely resembles that of the Union The executive authority is vested in the Governor He can exercise it either directly or through subordinate officers This however does not prevent Parliament or the Legislature of the State from conferring functions on any authority

The Governor is appointed by the President by warrant under his own hand and seal He holds office for five years unless he resigns earlier Only Indian citizens who have attained the age of thirty five and are not members of the Central or State Legislature are eligible for *appointment If a person is a member of any legislature at the time of appointment his seat will be deemed to have fallen vacant from the same time*

Besides free official residence the Governor of a State will draw a salary of Rs 5500 per month and such other allowances and privileges as were previously granted to the Governor of a Province

Powers

The Governor appoints the Chief Minister and on his advice the other ministers He al o appoints the Advocate General He can make rules for the administration of the State He has the power to grant pardon or suspend remit or commute sentences in certain cases He convenes or prorogues either House of the State Legislature dissolves the Legislative Assembly gives assent to a bill or reserves it for further consideration by the President He can send back a bill for reconsideration by the Legislature communicate messages to or address the Houses Like the President he is empowered to promul gate ordinances during the recess of the Legislature No money bill can be introduced in the House nor any demand for grant made except on his recommendation

As at the Centre there will be a Council of Mini ters to aid and advise the Governor in the exercise of his functions For the States also the Constitution contemplates the cabinet system But in order to furnish the Governor with all necessary information and enable him to exercise his authority more effectively as head of State the Chief Minister is directed (1) to submit to him all decisions of the Council of Ministers relating to administration and proposals for legislation (2) to supply such information relating to administration and proposals for legislation as the Governor may call for and (3) if the Governor so requires to submit for the consideration of the Council of Ministers any matter which has not been considered by the Council The Constitution requires Bihar the Central Provinces and Berar and Orissa to have a minister in charge of tribal welfare

Like the Lieutenant Governors in Canada and the Governors under the Government of India Act 1935 the Governors of the States under the new Constitution will ensure that the orders and directions of the Central Government are carried out by the governments of the States The Pres dent can also authori e the Governor of a State to act in any contingency not provided for in the Constitution

The heads of States mentioned in Part B of the First Schedule are known as Rajpramukhs They were appointed in accordance with the agreements made between the States Unions and the Government of India The head of the Jammu and Kashmir State only will be an ex ception Their salaries also are fi ed under these agreements Besides free official residence they are entitled to other allowances and privileges as may be determined by the President.

The executive authority of these States is vested in the Rajpramukh There is a Council of Ministers to aid and advise him In the transitional period before the legislature and cabinet are properly constituted the members of the Council of Ministers will be appointed by the Rajpramukhs As most of these States have so far had no responsible Government their transition to a representative form of Government cannot be quick The Constitution therefore provides that for ten years or such period as may be prescribed by Parliament the government of these States will function under the general control of the Government of India They are directed to comply with instructions which the President may issue from time to time Failure on the part of State governments to comply with the directions of the President will be considered a breach of the Constitution.

In the case of the State of Jammu and Kashmir the jurisdiction of the Centre is limited to those matters in the Union and Concurrent Lists which in consultation with the Government of the State are declared by the President to conform to the terms of the Instrument of Accession It can also extend to such other matters in the Lists as may be mutually agreed to by the Government of the State and the Government of India

The States, specified in Part C are administered by the President through a Chief Commissioner or a Lieutenant Governor appointed by him These States can also be administered through the government of a neighbouring State

Parliament can provide for a Council of Advisers or a Council of Ministers for these States It can also frame their constitutions powers and functions The Constitution envisages the gradual introduction of responsible government in these States

THE STATE LEGISLATURE

Like the Centre the State Legislature will consist of the Governor and the legislative chamber or chambers of the State The States of Madras Bombay Uttar Pradesh Punjab West Bengal and Bihar will have a bicameral legislature comprising the Legislative Assembly and Legislative Council and the rest of the States a unicameral legislature called the Legislative Assembly The bicameral system has been adopted as an experimental measure Parliament is however authorised to abolish the Legislative Council of

a State or create it in another State if the Legislative Assembly of the State concerned passes a resolution to that effect Th law giving effect to this resolution will not be treated as an amendment of the Constitution

LEGISLATIVE ASSEMBLY

The Legislative Assembly of a State has a normal lif of five years unless dissolved earlier Like the Central Assembly its duration can be extended in an emergency for a period not exceeding a year at a time It must however be dissolved within six months after the proclamation has ceased to operate The Legislative Assembly of a State will be elected on the basis of adult franchise The total number of its members will not be more than 500 and less than sixty The actual strength is to b determined on the ratio of one to every 75 000 of the population of the State The exceptions are the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong where the proportion cannot be maintained owing to its small population The population of a State will be ascertained on the basis of the figures published after the last census There will be no reservation of seats except for the Scheduled Tribes and Scheduled Castes The Governor can also nominate members of the Anglo Indian community to the Assembly if he is convinced that the community needs representation or is not adequately represented

The qualifications for a member of the Legislative Assembly are that he should (1) be a citizen of India (2) be not less than twenty five years of age and (3) possess such other qualifications as may be prescribed by Parliament

LEGISLATIVE COUNCIL

The Leg slative Council of a State will comprise not less than forty members and not more than a fourth of the total m mbership of the Assembly of that State It has a diverse personnel Nearly a third of its members are to be elected by electorates consisting of members of municipalities district boards and such other local autho rities in the State as Parliament may specify About a twelfth will be elected by electorates comprising graduates of three years standing Another twelfth will be elected by teachers who ha e worked for at

least three years within the State in an educational institution not lower than a secondary school A third will be elected by members of the Legislative Assembly from among non members The remainder will b nominated by the Governor They will include persons who have special knowledge of or practical experience in literature, science art co operative movement and social service

The Legislative Council of a State is a permanent body with one third of its members retiring every second year The minimum age of a member of the Legislative Council is thirty years Other qualifications are the same as those of members of the Legislative Assembly

The Constitution also envisages legislative bodies for States mentioned in Part C of the First Schedule Parliament may create a body nominated or partly elected to function as a legislature for these States

Judiciary

A well integrated competent and independent jud
guardian of democracy It safeguards the rights and l
people In a federal structure it is also the custodian of th
For it is only through the judiciary that the powers
organs are kept under control Besides a directi
Constitution has adopted special provisions to gi
an independent status

SUPREME COURT

At the apex of the Indian judiciary stands
Normally it will cons st of a Chief Justice and
The Privy Council now ceases to be the highes
In the method of appointment the Indian C
a middle course It does not give absolute disc
tive as in Great Britain Nor does it imitate t

in which the Pr sident appoints judges with the concurrence of the Senate Thus in the appointment of judges the Constitution stipulates adequate consultation with judicial authorities In the case of the appointment of the Chief Justice of India the President must consult such judges of the Supreme Court and High Courts as he may deem necessary On the other hand for the selection of the other judges of the Supreme Court he is required only to take the Chief Justice into confidence

TENURE

In order to attract the best legal talent in the country any judge of the High Court of at least five years standing or an advocate of a High Court with ten years practice or a distinguished jurist is eligible to become a judge of the Supreme Court Security of tenure is guaranteed to every judge He holds office till he is sixty five years old He can be removed on the ground of proved misbehaviour or incapacity The President can remove a judge only when an address has been presented against him by each House of Parliament

To ensure impartiality and integrity of the judges the Constitution debars them from pleading or appearing befo e any court or judicial authority in India This procedure corresponds to the restrictions imposed on the future employment of members of the public servic commissions The terms of service of judges include free accommodation for the Chief Justice and other judges who draw a monthly salary of Rs 5000 and Rs 4000 respecti ely Once appointed their privileges rights and allowances cannot be altered to their disadvantage

If a sufficient numb r of competent judges are not forthcoming both *ad hoc* and retired jud es may be appointed With the consent of the President the Chief Justice may appoint any eligible judge of the High Court for short periods Following the practice in the United States and the United Kingdom retired judges also can be recruited by the Chief Justice with the previous consent of the President They will not however be deemed full fledged judges of the court although they will enjoy all jurisdictional powers and privileges The President can also appoint one of the judges of the Supreme Court as Acting Chief Justice in the absence of the Chief Ju tice

SEAT

The Supreme Court will normally sit at Delhi It may also meet at such other places as the Chief Justice may decide from time to time with the approval of the President

JURISDICTION

Under the new Constitution the Supreme Court has wider powers than the High Court in any federation of the world including the Supreme Court of America As a court of record it has all the powers of such a court including the power to punish for contempt of court It is both a final interpreter of the Constitution and a final court of civil appeal. In criminal matters it can grant special leave of appeal and is empowered with criminal appellate jurisdiction in certain specified cases

ORIGINAL JURISDICTION

The original jurisdiction of the Supreme Court relates to constitutional disputes arising either between a State and the Government of India or between States Disputes arising out of the provisions of treaties with Indian States are however outside this jurisdiction

APPELLATE JURISDICTION

The appellate jurisdiction of the Supreme Court is three fold constitutional civil and criminal In constitutional matters an appeal would arise if the High Court certifies that a case involves a substantial question of law The Supreme Court however can itself grant special leave if it is satisfied that the case does involve such an issue In civil cases an appeal would generally go to the Supreme Court if the High Court certifies that the amount of the claim involved is not less than Rs 20 000 In criminal matters the appellate jurisdiction comprises cases where a High Court has (1) on appeal reversed the order of acquittal of an accused person and sentenced him to death or (2) withdrawn from trial any case from any court subordinate to its authority and has in such trial convicted the accused person and

sentenced him to death or (3) certified that the case is fit for appeal to the Supreme Court

The jurisdiction in criminal cases can be extended by Parliament subject to such conditions and limitations as may be specified by it

OTHER JURISDICTION

The Supreme Court also inherits the jurisdiction and powers of the Federal Court with respect to matters not specified in the Constitution It is given a vast revisory jurisdiction over all courts It can grant special leave of appeal against the judgment of any court or tribunal in the country except in relation to the Armed Forces Moreover its jurisdiction can be extended by Parliament in several other ways

ADVISORY FUNCTIONS

The Supreme Court has also certain advisory functions The President can refer to it any question of law or fact of public importance Under this jurisdiction even those disputes which involve interpretation of treaties or agreements of former Indian states can be referred to it although the Court has no original jurisdiction over them

PROCEDURE

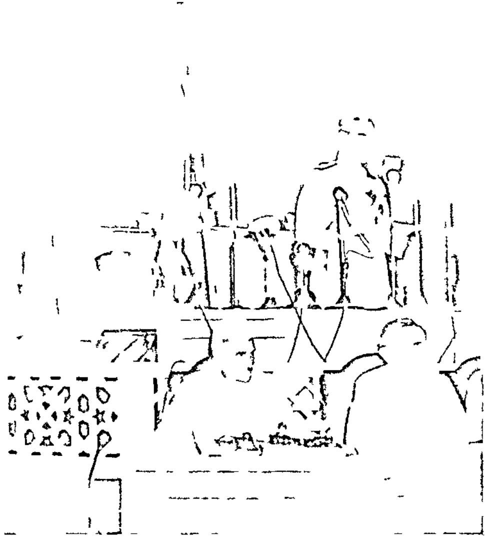
The Supreme Court will have powers to frame rules for regulating its practice and procedure subject to the approval of the President and provisions of law made by Parliament The Supreme Court will deliver all judgments in public with the concurrence of a majority of the judges present But in case a judge differs from his colleagues he can deliver a dissenting judgment

AUTHORITY BINDING ON ALL COURTS

As the highest court of the country the law declared by the Supreme Court will be binding on all courts in India Subject to the



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provisions of any law to be made by Parliament the Supreme Court is also given the power to review its judgments

INDEPENDENCE OF THE SUPREME COURT

In order to ensure the independence of the Supreme Court, the Chief Justice of India or such other judge or officer as he may direct is given the authority to recruit its staff and frame rules regarding conditions of service To secure the same end the administrative expenses of the Supreme Court including salaries allowances and pensions payable to its officers are charged to the Consolidated Fund of India and all fees and other incomes of the Court are deemed to be part of that fund

HIGH COURTS

The Constitution envisages one High Court for each State The actual number of judges including the Chief Justice will be determined by the President The appointment of the judges will be made by the President after consultation with the Chief Justice of India and the Governor of the State In the case of the appointment of a judge other than the Chief Justice the Chief Justice of the High Court concerned will be consulted A judge will ordinarily hold office till the age of sixty five The qualifications prescribed for the judge of a High Court are a little different from those of a judge of the Supreme Court Any citizen of India who has either held a judicial office for ten years or has been an advocate of a High Court for ten years is eligible for this office

As regards the salaries and allowances the Chief Justice of a High Court will draw Rs 4000 and a judge Rs 3500 per month as well as such allowances as may be fixed by the President from time to time Like his colleagues in the Supreme Court his emoluments and conditions of service cannot be changed to his disadvantage during his tenure of office The provisions regarding the appointments of the Acting Chief Justice and retired judges are similar to those applicable to the Supreme Court

The provisions relating to the High Court are based on those of the Government of India Act of 1935 Subject to the provision of the Constitution and the provisions of any law made by an appropriate

legislatur the High Courts in th States retain their present jurisdic tion and pow rs The limitations on their original jurisdiction over revenu and its collection are r moved The High Courts ar also given powers (1) to issue writs for the enforcement of fundamental rights (2) of superintendenc over civil courts and tribunals in the State and (3) to take over ca es from subordinate courts

Only Parliament can take away or add to the area of jurisdi tion of the High Court of a State The State Legislature is not competent to deal with the extra statal jurisdiction

SUBORDINATE COURTS

According to the Constitution the appointment posting and promotion of District Judges will be made by the Governor in consul tation with the High Court of the State The requisite qualifications for the post are that a person should already have been in Union or State service or should have been an advocate or a pleader for at least seven years and should be recommended for appointment by the High Court Judges other than the District Judges will be appointed by the Governor in accordance with rules to be made by him after consultation with the State Public Service Commission and the High Court Control over district and other subordinate courts including the powers of posting and promotion of the judges is vested in the High Court

PUBLIC SERVICES

The standard and efficiency of administration in any country depends ultimately on the calibre training and integrity of the public services In providing the basic condition of public service tenure of office rights emoluments privileges and the method of recruit ment the new Constitution therefore seeks to attract men of vi ion ability and honesty to man the administrative apparatus of a Welfare State It guarantees equality of opportunity although an exception has b en made in the case of the Scheduled Classes and Scheduled Tribes for whom subj ct to the maintenance of effic ency in administration a certain percenta e of seats and posts may be reserved

Recruitment to public services through a public service commission is a well recognized principle in democratic States. As this principle has already been put into practice, the Constitution provides for a public service commission for the Union and one for each State. But it also permits two or more States to have a joint public service commission provided a resolution to that effect is passed by each House of the State legislature concerned. In that case, Parliament will constitute by law a joint commission to serve the needs of those States. The States can also approach the Union Public Service Commission to act on their behalf.

The main function of the Union and State public service commissions is to recommend candidates for appointment and to conduct examinations for recruitment to the Central and State services. The Union Public Service Commission will also assist, if so required, by two or more States in framing and operating schemes of joint recruitment for any services for which special qualifications are required. As guardians of the services, the public service commissions are to be consulted on

(a) [illegible] method of recruitment [illegible]

(b) [illegible]

(c) [illegible]

They are also to be consulted in matters of claims by public servants relating to costs incurred by them in defending legal proceedings instituted against them, as well as for the award of pensions in respect of injuries sustained during service under the Government. Their advisory functions include such matters as may be referred to them by the President, the Governor or Rajpramukh. They will have nothing to do with posts reserved for members of the Scheduled Castes or Scheduled Tribes or any backward class of citizens in the Union or a State. In addition, the heads of the Union and States can also provide by regulation that it will not be necessary to consult the public service commission in certain matters in general or in any particular class of cases or in any particular circumstance.

PERSONNEL

The total number of members of the commission is not fixed by the Constitution The exact strength and conditions of service are to be laid down by the respective heads of administration The conditions of service cannot however be revised to the disadvantage of members after appointment

As the function of the commission is to choose suitable personnel for the public services it is essential for the members to be men of experience The Constitution therefore provides that nearly half the members of every commission should have at least ten years administrative experience

TERM OF OFFICE

The term of office of a member of a public service commission is fixed at six years or until he attains in the case of the Union Commission the age of sixty five and in the case of a State Commission or a joint Commission the age of sixty

REMOVAL OF MEMBERS

The members of a public service commission are liable to be removed by the President on evidence of misbehaviour The principle followed in this case is based on the provisions of the Government of India Act 1935 for the removal of High Court and Federal Court judges Accordingly the Constitution provides for an enquiry by the Supreme Court on the basis of which the President will take action

ELIGIBILITY FOR FURTHER EMPLOYMENT

In order to ensure integrity and impartiality members of the commissions are ineligible for further employment under any Government Another step taken to ensure the independence of the commissions is to charge their expenses including salaries allowances pensions etc to the Consolidated Funds In other words emoluments

of members of the public service commissions are declared non votable and their tenure is not subject to the vicissitudes of political parties and favouritism

Moreover regulations made by the President Governors or Rajpramukhs for their respective commissions are to be laid before each House of their legislatures To prevent interference with recommendations of the public service commissions the Constitution ordains that the public service commission shall present annual reports to the heads of governments covering the work done by them during the year The governments in their turn will place before each House of the legislature a copy of it together with a memorandum explaining the cases in which the advice of the commission was not accepted The ministries will thus be answerable for all deviations from the recommendations of the public service commissions In this way recognition of merit will be assured

COMPTROLLER AND AUDITOR GENERAL OF INDIA

The Comptroller and Auditor General of India will keep a vigilant watch on the finances and accounts of the Union and the States He is appointed by the President and has the independent status of a judge He scrutinises the accounts and reports on all cases of misappropriation He will also ensure that the monies voted by the legislatures are spent under appropriate head His annual reports relating to the account of the Union and the States will be submitted to the heads of administration before they are laid before the legislatures

Conclusion

THE Indian Constitution envisages a democratic secular State. It makes India the largest of the existing democracies and creates an electorate which is estimated to be one twelfth of the world's entire population. The new Constitution endeavours to translate into practice the noble concept of a co-operative commonwealth — a blending of the ballot paper and economic democracy. It includes the most elaborate declaration of human rights so far framed by any State. For the first time in the history of India the country has been territorially integrated and woven into one political texture. India now becomes a nation.

The new Constitution is a flexible and workable constitution designed to suit all eventualities. The federal structure may function as a unitary system in the event of an emergency like war. This is based *on a well recognised principle that in an emergency it is* the Centre which commands the residuary loyalty of citizens. It alone can work for the general good of the country. The over-riding powers of the Centre however are sometimes criticised as being unfair to the units. But this is an erroneous conception, for the basic feature of a federation is the distribution of authority between the Centre and the units. In the Indian Constitution except in emergencies this



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character will remain unimpaired and not even courts can alt r it fundamentally Nor can Parliament change it permanently Moreover the ov r riding pow rs of the Centre are not meant to be a normal feature of the Constitution They are xpressly confined to emer gencies They corr spond to th heavy responsibilities of the Centre

Nonetheless th Const tution s only a mechanism However good a Constitution may be obser ed Dr Ambedkar t is sure to turn out bad because those who are called to work it happen to be a bad lot The success of a Constitution d pends upon national character th spirit in which it is op r ted and the goodwill of the people work ing it But the ultimate form and character of our Government will also rest on our laws pr n iple con ntions and precedents more than anything else on the sense of fairplay justice and equity displayed by political parti s and tl active and willing co operation of the people

The Constitution i often de cribed as the Charter of Indian Independence But no constitution by itself can become the citad l of a nation s indep ndence If the p ti s place creed above country remarks Dr Ambedkar our Independence will be put in jeopardy a econd time and probably lost fo ever This eventuality w must resolutely guard against We must b determ ned to defend our Independence with the last drop of ou blood

APPENDICES

I

Names of States as ment oned in the First Schedule

PART A

1 A sam
2 Bihar
3 Bombay
4 Madhya Pradesh
5 Madras
6 Orissa
7 The Punjab
8 Uttar Pradesh
9 West Bengal

PART B

1 Hyderabad
2 Jammu and Kashmir
3 Madhya Bharat
4 Mysore
5 Patiala and East Punjab States Union
6 Rajasthan
7 Saurashtra
8 Travancore Cochin
9 Vindhya Pradesh

PART C

1 Ajmer
2 Bhopal
3 Bilaspur
4 Coorg
5 Delhi
6 Himachal Pradesh
7 Kutch
8 Manipur
9 Tripura
10 Cooch Behar

C o h B h h w m g d in West Be g l

II

PUBLIC SERVICES IN INDIA

ALL INDIA SERVICES

Without depriving the States of their right to form their own public services the Constitution provides for a few all India services recruited on an all India basis and members of these services will be appointed to important posts in the Union The Indian Administrative Service and the Indian Police Service are examples But similar services can be created by the decision of the Council of States supported by two thirds of the members present and voting if such a step is considered necessary in national interest

RULES AND REGULATIONS

Subject to its provisions the Constitution vests authority in the respective legislatures to regulate by law the recruitment and the conditions of service of persons appointed to the public services Till such laws are enacted the respective heads of governments or persons so directed by them are permittted to make the necessary regulations

TENURE OF OFFICE

All public servants in India whether provincial or central will hold office during the pleasure of the respective heads of their governments Contract jobs however are an exception to this rule compensation can be paid to such persons if they are required to vacate their posts either because such posts are abolished or for any reason other than misconduct

In matters of dismissal or retrenchment the Constitution provides two fold safeguards to incumbents viz

(1) that no public servant will be dismissed or removed by an authority subordinate to that by which he was appointed

(2) that no dismissal or reduction will be effected until he

has been given a reasonable opportunity of defence against the action proposed to be taken in regard to him

But these safeguards are denied in the following cases

(a) where dismissal or reduction takes place as a result of the conviction of a public servant on a criminal charge

(b) where an authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of stating his case

(c) where the head of the Government concerned is satisfied that in the interest of the security of the State it is not expedient to give such an opportunity to that person

GUARANTEE OF CERTAIN PRIVILEGES TO SECRETARY OF STATE S SERVICES

There is special provision in the Constitution which assures continuance of certain constitutional guarantees given to members of the former Secretary of State s Services This provision covering the members of the Indian Civil Service Indian Medical Service Indian Police Service etc guarantees them as far as changed circumstances permit the old conditions of service including remuneration leave pension etc which existed before the inauguration of the Constitution This assurance is given in conformity to the pledge given by the leaders of the nation at the time of the transfer of power to the Indian Union

III

OFFICIAL LANGUAGE OF THE UNION

Article

343 (1) The official language of the Union shall be Hindi in Devanagari script

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals

(2) Notwithstanding anything in clause (1) for a period of fifteen years from the commencement of this Constitution the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement

Provided that the President may during the said period by order authorize the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union

(3) Notwithstanding anything in this article Parliament may by law provide for the use after the said period of fifteen years of

(*a*) the English language or

(*b*) the Devanagari form of numerals for such purposes as may be specified in the law

Directive for the Development of the Hindi Language

351 It shall be the duty of the Union to promote the spread of the Hindi language to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius the form style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule and drawing wherever necessary or desirable for its vocabulary primarily on Sanskrit and secondarily on other languages

IV

IMPORTANT LANGUAGES OF INDIA

1 Assamese
2 Bengali
3 Gujarati
4 Hindi
5 Kannada
6 Kashmiri
7 Malayalam
8 Marathi
9 Oriya
10 Punjabi
11 Sanskrit
12 Tamil
13 Telugu
14 Urdu

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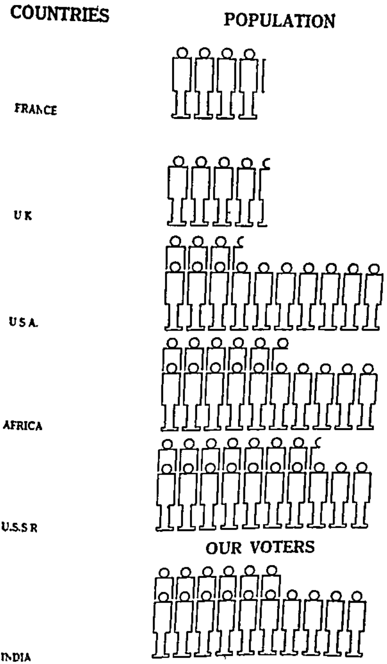
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17 Debates of the Constituent Assembly

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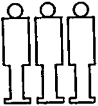
19 Report of the Drafting Committee November 3 1949

20 The Constitution of India

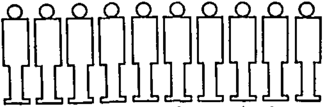


EACH FIGURE INDICATES TEN MILLION PEOPLE

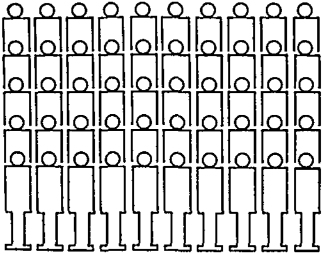
OUR VOTERS



3% of the total population under the Act of 1919



10 of the total population under the Act of 1935



50% of the total population under the New Constitution

EACH FIGURE INDICATES ONE PER CENT